

**Little Hoover Commission  
Testimony**

**Immigrants in the Criminal Justice System and The Office of the Public Defender for Santa Clara County**

**Testimony provided by:  
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1. The unique needs of Immigrants in the Criminal Justice System: Currently there is an increasing number of immigrants who find themselves lost in the criminal justice system .
  1. In fact, according to the survey conducted by the Summit on Immigrant Needs & Contributions of Santa Clara County one out of four inmates in the county jail self-identify themselves as immigrants.
  2. The largest group of immigrant inmates were determined to be from Mexico, followed by immigrants from Vietnam, the Philippines, El Salvador, China, and India. The lives of immigrants and their families are being torn apart by jail time, a lack of information, and fear which could be reduced with more knowledge and support.
  3. Additionally, once immigrants leave the criminal arena most of them find themselves in deportation proceedings or facing long federal prison terms for illegal reentry which causes a further break down in California's immigrant communities.
  4. In order to ensure the success of Immigrants in California, and the success of California as a whole, we must develop support networks and legislative policies which address the special needs of immigrants within the criminal justice system.
2. Findings of the Summit on Immigrants Needs & Contributions:
  1. Preventing crime by educating immigrants before they enter the criminal justice system: There is currently a tremendous need for educating Immigrant communities on the laws of the United States, the working of the criminal justice system, and the assertion of their constitutional rights. For example: 42% of Filipinos, Indians, Cambodians, and Ethiopians, among other groups stated they did not know they were breaking the law when they were stopped by police; and 26.2% of immigrants in the Santa Clara County Jails surveyed indicated that the customs or accepted behaviors in their native countries caused them problems in the United States; and 20.6% of immigrants stated they did not know what their legal rights were at the time of a stop by law enforcement.
  2. Educating immigrants as soon as they enter the criminal justice system: Once immigrants enter the criminal justice system they are overwhelmed, afraid, and often do not understand the significance of what is occurring. As a result, they often make decisions which make the situation worse for themselves and their families. For example a survey

conducted of Judges, Attorneys, and Court staff by Judge Paul J. DeMuniz and Joanne I. Moore and published in the book *Immigrants in Courts* found many immigrants do not fully understand the advisement of rights read to them during arraignment. For many immigrants this is the first time they are introduced to these legal concepts and they are not able to familiarize themselves with the meaning of their rights within the tight constraints of the arraignment calendar.

3. Immigrants and trial: Immigrants face difficulty with understanding court interpreters and court procedures. Because immigrants possess a varying degree of education and each country maintains unique colloquialisms and numerous dialects, strict translations are not always appropriate. Often time translations in court do not take this into account leaving immigrants at a disadvantage. For example, Mexico has over 260 indigenous dialects spoken by its citizens. In addition, immigrants are severely under represented as jurors.
  4. Post trial and sentencing: There are almost no programs specifically set up for immigrants or the Limited English Proficient. For example, there are insufficient bilingual rehabilitation counselors inside jails; there is a lack of books in other languages inside the jails, there are no interpreters for phone calls, immigrants have no way of contacting relatives abroad, rule books and program release information is not translated or explained properly. In addition, there are an equally insufficient amount of programs available upon release to assist immigrants in rebuilding their lives and families.
  5. Immigration Consequences of Criminal Pleas: As a result of recent legislation and case law, immigrants with minor criminal convictions are faced with life devastating immigration consequences. In most instances the immigration consequences are far worse than any possible criminal sentence. In fact, for many immigrants a minor criminal conviction can result in banishment from the United States and permanent separation from loved ones. Immigrants with criminal convictions are being targeted by the INS and are currently being deported or excluded from the United States in large numbers. It is especially important for immigrant inmates to be aware of immigration consequences since they often find themselves with immigration holds meaning that on their scheduled date of release instead of going home they are sent to an INS detention facility. Knowledge of these severe consequences among immigrant groups will go a long way to reduce recidivism and keep immigrant family units together.
3. The Response of the Office of the Public Defender of Santa Clara County to the needs of our immigrant clients:
1. Creating a Bilingual and Culturally Diverse Work Force:
    1. The Office of the Public Defender has recognized the need for an increased number of bilingual attorneys and staff members to ensure that we are able to communicate with our immigrant clients, ensure they understand what is

occurring, and ensure that translators and other court staff are properly performing their duties.

2. Language is not the only barrier which immigrants must overcome. Many of the problems immigrants face in the criminal justice system as outlined above are a direct result of a misunderstanding of an immigrants behavior stemming from their different cultural background. In order to ensure that our office is sensitive to the cultural backgrounds of our clients and ensure an atmosphere of trust, the office has made it a priority to increase the number of attorneys from various cultural backgrounds. In fact, the office was awarded the Diversity Award by the Santa Clara County Executive last year.
2. Providing extensive training and resources on the special needs of our immigrant clients and what we can do to assist them succeed. The Office of the Public Defender has a research and training attorneys devoted to training staff, maintaining necessary legal sources, and keeping up-to-date on legal changes. Our office has worked to maintain an understanding of the needs of our immigrant clients and to provide the necessary information to attorneys, investigators, paralegals, and other support staff. Training by office members and invited guest speakers are conducted Tuesday afternoons on a regular basis on topics such as those listed below:
  1. Bias in the Criminal Justice System;
  2. Knowledge of Culture and Cultural Proficiency
  3. How to work with court interpreters and overcoming language barriers
3. Extensive training sessions by office and invited guests are conducted on the Immigration Consequences of Criminal Convictions
  1. Norton Tooby a leading expert on the immigration consequences of criminal pleas has provided training for attorneys in the office on how to best represent immigrant defendants and avoid immigration consequences;
  2. The office has entered into a contract with the Immigrant Legal Resource Center to provide support and answer complex questions on the immigration consequences of criminal pleas on a case by case basis. In addition, Kathy Brady of the ILRC has also conducted oral presentations to our attorneys and provided written material on immigration law and the unique needs of immigrant defendants.
  3. The office has developed extensive library resources both on line and in written form. Our library includes various manuals on immigration law, and the immigration consequences of criminal pleas.
4. Collaboration with County Agencies. The Office of the Public Defender works closely with the Department of Corrections, The Probation Department, Law Enforcement, The Courts and the County Office of Citizenship and Immigrant Services to better serve and continually develop better methods of identifying and addressing the needs of immigrant communities. The greatest success story of the effectiveness of collaboration can be

seen with our active participation with the Summit on Immigrant Needs & Contributions. The office of the public defender has taken the findings and recommendations of the summit seriously and has already implement several of the recommendations developed by the Summit such as the establishment of an immigration attorney position.

- IV Future plans to incorporate the findings of the Summit on Immigrant Needs & Contributions:
- A. Future Collaboration with Community Based Organizations: The Office plans to work closely with community based organizations in the area to develop a thorough understanding of the needs of our immigrant clients and to share valuable information and lessons. For example, we will work to provide information to community based organizations on the nuances of the criminal justice system and criminal law in general while and in exchange we hope that community based organizations can provide us with information on the collateral consequences encountered by immigrants after leaving the system and issues our clients face outside of the system on a day to day basis. Some agencies the office would like to establish a strong relationship with are the East San Jose Law Clinic, Center for Employment Training; The Asian Law Alliance, and California Rural Legal Assistance, Inc. For example, the office has worked with the East San Jose Community Law Center to both assist them on informing the immigrant communities they serve regarding the workings of the criminal justice system and they have assisted us on recognizing the needs of our immigrant clients, increasing our cultural proficiency, and by providing training on immigration issues affecting our clients such as the Violence Against Women Act's immigration provisions. Our research team devotes the necessary time and resource to maintaining an up-to-date working knowledge on new case law, legislative changes, evolving INS regulations, and police changes which affect our immigrant clients.
2. Immigration Attorney Position: The Summit recognized the need of better informing immigrant defendants of the immigration consequences of criminal pleas and recommended that the Office of the Public Defender establish an immigration expert attorney position within the office. This position was immediately requested by the office and was approved by the County Board of Supervisors. Please see the attached position description for the new position which is to be filled in September of 2001.
3. Expanded Collaboration with county agencies such as the Department of Corrections, The Probation Department, Law Enforcement, The Courts and the County Office of Citizenship and Immigrant Services. In fact, the County in response to the Summit recommendations has established the "How to Live in America" program. This program intends to educate Spanish speaking immigrants on U.S. laws and customs and judicial processes. The goal of the program is to reduce repeat offenses by giving the Latino population a better understanding of the U.S. legal system. The Office of the Public Defender will be working closely with this organization to ensure that the program

implemented works to strengthen an immigrants ability to assert his/her rights within the criminal justice system.

III. Lessons Learned:

- A. The needs of immigrant communities and immigrant defendants are continually evolving. As laws change or the needs of the immigrant communities of Santa Clara change, those serving immigrants and legislative policy must also be poised to evolve and meet these changing needs. We must be able to adapt and grow to meet these changes.
- 1. Collaboration is the key to keeping informed of the needs of immigrants, determining methods of meeting these needs, and actually implementing programs/policies which assist immigrant communities.

IV Barriers which continue to prevent improving outcomes for immigrants:

- 1. A lack of information regarding the ever evolving needs of immigrants both in the County and throughout the State;
- 2. Work load; and
- 3. Funding

V. Research similar to that conducted by the Summit on Immigrant Needs & Contributions should be conducted on a state wide level.